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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 ANTHONY WILLIAMS,
8 Plaintiff,
9 v.
10 A. LUJAN,
11 Defendant.

Case No. [16-cv-04290-HSG](#)

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. No. 27

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13 Plaintiff, an inmate at San Quentin State Prison (“SQSP”), has filed a *pro se* complaint
14 under 42 U.S.C. § 1983 alleging that SQSP Officer Lujan confiscated several items of Plaintiff’s
15 personal property on October 9, 2015, in violation of Plaintiff’s federal due process rights. Dkt.
16 No. 19; Dkt. No. 17 at 2; and Dkt. No. 20 at 2. Now pending before the Court is Defendant
17 Lujan’s motion for summary judgment. Dkt. No. 27. Plaintiff has filed an opposition, Dkt. No.
18 36; and Defendant Lujan has filed a reply, Dkt. No. 40. For the reasons set forth below,
19 Defendant Lujan’s motion for summary judgment is GRANTED.

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BACKGROUND

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A. Undisputed Facts

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Plaintiff was previously housed at Folsom State Prison (“FSP”). On or about March 23, 2015,¹ Plaintiff was moved from the FSP general population to the FSP administrative segregation unit. Dkt. No. 36 at 28. At that time, an inventory was taken of Plaintiff’s property which established that he possessed *inter alia* two pairs of shoes and two watches. Dkt. No. 36 at 38.

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¹ In his declaration, Plaintiff states that he was removed from FSP’s general population to FSP’s administrative segregation on March 23, 2017. Dkt. No. 36 at 28. The Court presumes that the year 2017 is a typographical error and that Plaintiff intended to refer to the year 2015. According to the record, Plaintiff has been housed in SQSP since June 2015. Dkt. No. 36 at 29.

1 The inventory does not specify the brand of either the watches or the shoes. Dkt. No. 36 at 38.
2 An undated FSP Registered Property receipt states that the only registered property that Plaintiff
3 possessed while at FSP was a 15.6 inch RCA television, purchased on February 21, 2015; one pair
4 of size 13 Air Jordans, purchased on January 23, 2015; and one eight-inch West Bend brand fan,
5 purchased on March 19, 2014. Dkt. Nos. 27-2 and 27-3. Registered property refers to personal
6 property items that are not consumable and possess enough intrinsic value to be a significant target
7 for theft or bartering. Cal. Dep’t Corr. & Rehab. Dep’t Operations Manual (“DOM”) §
8 54030.12.1. Inmates must register these items with the prison on their Inmate Property Control
9 Card, CDC Form 160-H, by listing the item, the purchase date, and the purchase price; and by
10 attaching a copy of the purchase receipt if available. DOM § 54030.12.1. Watches and shoes
11 must be registered. Dkt. No. 27-8 (“Lujan Decl.”), Ex. B.

12 On or about June 2015, Plaintiff was transferred from FSP to SQSP. Dkt. No. 36 at 29.
13 SQSP inventoried Plaintiff’s property on June 12, 2015, and listed only one pair of Nike shoes and
14 one Gucci watch. Dkt. No. 36 at 40. No Invicta watch was listed on the property inventory.

15 On July 13, 2015, Plaintiff’s cell was searched by the Investigative Services Unit (“ISU”).
16 Dkt. No. 19 at 1 and 10; Dkt. No. 28-1 at 6. ISU did not confiscate his Nike shoes or watches.

17 On September 25, 2015, Defendant Lujan searched Plaintiff’s cell for over an hour and
18 discovered a contraband cell phone, which she confiscated. Dkt. No. 19 at 1 and 10; and Dkt. No.
19 27-4 (“Lujan Decl.”) ¶ 9, Ex. I. Defendant Lujan did not confiscate the Nike shoes or watches at
20 that time. Dkt. No. 19 at 1 and 10.

21 On October 9, 2015, Defendant Lujan searched Plaintiff’s cell and found the following two
22 items which were stored in plain sight: an Invicta Reserve watch with an extra metal band, and a
23 pair of Nike Air Jordan shoes, size 12, with metal eyelets. Dkt. No. 19 at 1 and 10; Dkt. No. 36 at
24 10. Defendant Lujan confiscated these items. On the confiscation receipt, she stated that the
25 items were being confiscated because they were contraband and because they were not listed on
26 Plaintiff’s property card. Dkt. No. 36 at 42. Defendant Lujan performed a Google search to
27 ascertain whether the Invicta watch exceeded the \$50 value limitation for watches registered to
28 inmates, and learned that the Invicta watch did exceed the allowable value. Lujan Decl. ¶ 7. The

1 Invicta watch retails for \$376.35. Dkt. No. 40-2; Lujan Decl. ¶ 7. Plaintiff has not provided
2 prison officials with purchase receipts for either of the confiscated items. Lujan Decl. ¶ 7 and Dkt.
3 No 36 at 11.

4 Prison officials denied Plaintiff's repeated requests that he be allowed to send the
5 confiscated items to family or friends outside of prison. Dkt. No. 36 at 19.

6 On October 26, 2015, Plaintiff submitted a CDCR Form 22 Request for Interview,
7 requesting that his items be returned to him or that he be allowed to send them home. Dkt. No. 19
8 at 20. Defendant Lujan denied the Form 22 request on the grounds that Plaintiff could not prove
9 authorized ownership of the items. Dkt. No. 19 at 20.

10 On November 16, 2015, Plaintiff filed Grievance No. SQ-15-3099, which alleged *inter*
11 *alia* that Defendant Lujan improperly confiscated his property. Dkt. No. 28-1 at 4–7. Plaintiff
12 requested *inter alia* that the shoes and watch be returned to him, or that he be allowed to send
13 them home. Dkt. No. 28-1 at 4–7. This grievance was denied at all levels of review on the
14 grounds that Plaintiff could not prove authorized ownership of the items because he could not
15 produce a purchase receipt for either item and because neither item was registered on his Property
16 Control Card (CDC Form 160-H). Dkt. No. 28-1. This grievance was denied at the third and final
17 level of review on June 1, 2016. *Id.*

18 Plaintiff's Property Control Card, Form 160-H, does not list any watches and lists only one
19 pair of Nike shoes. The size or type of Nike shoes is not listed. Dkt. No. 27-11.

20 **B. Disputed Facts**

21 Plaintiff contends that he has possessed the Invicta watch and size 12 Nike shoes since his
22 time at FSP. He alleges that the March 23, 2015 FSP Inmate Property Inventory reflects his
23 possession of these items because it refers to two pairs of shoes and two watches. He further
24 claims that the reason the SQSP inventory lists only one pair of shoes and one watch is due to
25 SQSP staff's failure to accurately inventory his belongings. He claims that although both the
26 Gucci watch and the Invicta watch were in his property box, SQSP staff incorrectly failed to list
27 both watches, and that SQSP incorrectly failed to list the pair of Nike shoes that he was wearing
28 during his transit from FSP to SQSP. Dkt. No. 36 at 29.

1 Plaintiff alleges that Defendant Lujan confiscated the items for the purpose of taking
2 Plaintiff's valuable belongings. According to Plaintiff, after first noticing the size 12 Nike Air
3 Jordans and the Invicta watch during the September 25, 2015 cell search, Defendant Lujan
4 conducted a Google search to determine the value of these items. Dkt. No. 36 at 10. Once
5 Defendant Lujan realized the value of these items, she conducted a cell search on October 9, 2015
6 for the purpose of possessing Plaintiff's valuable belongings. Dkt. No. 36 at 10. When Defendant
7 Lujan confiscated the items, Plaintiff asked her, "Are we going to discuss this?" and Defendant
8 Lujan responded, "Not today." Dkt. No. 19 at 10. A few days later, an inmate approached
9 Plaintiff to convey a threat from Defendant Lujan, stating that if Plaintiff attempted to retrieve his
10 property, he would be issued a Rules Violation Report (CDCR Form 115). Dkt. No. 19 at 10.
11 When Plaintiff protested, the other inmate informed him, "This is San Quentin and they do as they
12 please." Dkt. No. 19 at 10. The confiscated items have since "disappeared" because of Defendant
13 Lujan's deliberate actions. Dkt. No. 36 at 21.

14 Defendant Lujan disputes Plaintiff's allegations regarding the motivation for the October
15 9, 2015 cell search, and the current disposition of the confiscated items. According to Defendant
16 Lujan, during the October 9, 2015 search, Defendant Lujan found two pairs of Nike shoes and an
17 Invicta watch with an extra metal band. Lujan Decl. ¶ 8. Because one of the pairs of Nike shoes
18 had no metal eyelets and was a type of shoe that could be purchased from one of the approved
19 third-party providers, Defendant Lujan did not confiscate this pair. Lujan Decl. ¶ 8. The other
20 pair of Nike shoes, size 12 Air Jordans, had metal eyelets which are prohibited by prison
21 regulations. Lujan Decl. ¶ 5. Defendant Lujan attempted to find evidence Plaintiff had lawfully
22 acquired the Nike Air Jordans with metal eyelets and the Invicta watch with extra metal band, but
23 the items were not listed on Plaintiff's property card (CDC Form 160-H) and Defendant Lujan
24 could not find any purchase receipts for these items. Lujan Decl. ¶ 7. Defendant Lujan performed
25 a Google search to ascertain whether the Invicta watch exceeded the \$50 value limitation for
26 watches registered to inmates. Lujan Decl. ¶ 7. Defendant Lujan confiscated the Nike Air Jordans
27 with metal eyelets and the Invicta watch and extra metal band because they violated prison
28 regulations. Lujan Decl. ¶ 7 and Ex. E. Defendant Lujan denies taking the items as her own

1 personal property and is unaware of anyone else taking the items as their own personal property.
2 Dkt. No. 40-1 (“Suppl. Lujan Decl.”) ¶ 2. Defendant Lujan states that the confiscated items are
3 currently stored with the SQSP ISU as evidence. Suppl. Lujan Decl. ¶ 2. Defendant Lujan also
4 denies threatening Plaintiff for any reason, including threatening him to stop seeking to recover
5 the confiscated items. Suppl. Lujan Decl. ¶ 4. Defendant Lujan further denies sending an inmate
6 or any other person to convey threats to Plaintiff. Suppl. Lujan Decl. ¶ 4.

7 **C. Prison Regulations Regarding Prisoner Property**

8 Section 3192 of the California Code of Regulations, title 15, provides that

9 [a]n inmate’s right to inherit, own, sell or convey real and/or personal property does not
10 include the right to possess such property within the institutions/facilities of the
11 department. An inmate may not exchange, borrow, loan, give away or convey personal
property to or from other inmates. Violation(s) of this rule may result in disciplinary
action, and confiscation and/or disposal of the personal property.

12 15 Cal. Code Regs. § 3192. The CDCR’s internal regulations also provide that the possession of
13 personal property by inmates within the prison is a privilege that is subject to conditions and
14 restrictions. DOM § 54030.1. Inmates are allowed to possess in their quarters/living areas the
15 state-issued and authorized personal property listed in the Authorized Personal Property Schedule
16 (“APPS”), which is located in Appendix A to the DOM. Section 54030.7 of the DOM sets forth
17 the criteria governing what constitutes, and how to obtain, authorized personal property. DOM §
18 54030.1. One requirement is that, except in certain instances that are inapplicable here, personal
19 property items must be received or obtained from a departmentally approved vendor. Lujan
20 Decl. ¶ 4 and DOM §§ 54030.7–54030.9.1. Inmate personal property shall not be accepted at the
21 front entrance gate or visiting desks. DOM § 54030.7. Title 15 prohibits inmates from
22 exchanging, borrowing, loaning, giving away, or otherwise conveying personal property to or
23 from other inmates. Lujan Decl. ¶ 4.

24 Title 15 requires inmates to register personal property items which are not consumable and
25 possess enough intrinsic value to be a significant target for theft or bartering. DOM § 54030.12.1.
26 Registerable personal property is identified in the APPS. DOM § 54030.12.1. Shoes and watches
27 must be registered. Lujan Decl., Ex. B.

28 Pursuant to both SQSP Operating Procedure and Title 15, contraband is any personal

1 property not authorized by departmental or institutional regulations, in excess of the maximum
2 quantity permitted, or which is received or obtained from an unauthorized source. 15 Cal. Code
3 Regs. § 3006; DOM § 52051.4. If an inmate fails to register property pursuant to the regulations,
4 it is designated as contraband. Dangerous contraband is defined as anything that can be used to
5 facilitate a crime, including metal. 15 Cal. Code Regs. § 3000. In addition, contraband includes
6 anything that, if retained in possession of the inmate, presents a serious threat to facility security
7 or the safety of inmates and staff. 15 Cal. Code Regs. § 3006

8 Title 15 prohibits inmates from possessing any contraband or material reasonably deemed
9 a threat to legitimate penological interests. 15 Cal. Code Regs. § 3006. Under Title 15, the
10 possession of property that is not registered in the inmate's name and number is cause for
11 disciplinary action, including confiscation of the unregistered property. 15 Cal. Code Regs. §
12 3191. General contraband, with the exception of contraband items which are unauthorized by
13 departmental or institutional regulations but obtained by authorized means, must be disposed of by
14 the facility garbage; or removed from the facility grounds by an approved, certified metal vendor;
15 or if state-issued, rerouted to the appropriate departments for disposition and/or repair for
16 reissuing. DOM § 52051.16. Contraband items which are unauthorized by departmental or
17 institutional regulations but obtained by authorized means may be sent home by inmates at their
18 own expense or may be donated to the prison facility. DOM § 52051.16.

19 Pursuant to the APPS, inmate tennis shoes may not contain metal components, including
20 eyelets, and may not exceed a value of \$75. Lujan Decl. ¶ 5 and Ex. B. Metal eyelets present a
21 threat to prison security because inmates can use the metal components to make weapons. Lujan
22 Decl. ¶ 5. Pursuant to the APPS, inmates may not possess watches with a purchase value that
23 exceeds \$50. Lujan Decl. ¶ 5 and Ex. B. Property items worth more than the maximums listed in
24 the APPS threaten institutional security because, among other reasons, they create an incentive for
25 inmates to steal or otherwise impermissibly acquire property that does not belong to them. Lujan
26 Decl. ¶ 5 and Ex. B. Tennis shoes and watches more valuable than the maximums listed in the
27 APPS are prohibited because they can be used as a type of currency to facilitate improper and
28 dangerous prison activities, such as drug and cellphone trafficking. Lujan Decl. ¶ 5.

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DISCUSSION

2 A. Legal Standard

3 Summary judgment is proper where the pleadings, discovery and affidavits show there is
4 “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
5 law.” *See Fed. R. Civ. P. 56(a)* (2014). Material facts are those that may affect the outcome of the
6 case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material
7 fact is genuine if the evidence is such that a reasonable jury could return a verdict for the
8 nonmoving party. *See id.*

9 A court shall grant summary judgment “against a party who fails to make a showing
10 sufficient to establish the existence of an element essential to that party’s case, and on which that
11 party will bear the burden of proof at trial [,] . . . since a complete failure of proof concerning an
12 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”
13 *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). The moving party bears the initial
14 burden of identifying those portions of the record that demonstrate the absence of a genuine issue
15 of material fact. *Id.* The burden then shifts to the nonmoving party to “go beyond the pleadings
16 and by [his] own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
17 file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *See id.* at 324
18 (citing Fed. R. Civ. P. 56(e)).

19 For purposes of summary judgment, the court must view the evidence in the light most
20 favorable to the nonmoving party; if the evidence produced by the moving party conflicts with
21 evidence produced by the nonmoving party, the court must assume the truth of the evidence
22 submitted by the nonmoving party. *See Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).
23 The court’s function on a summary judgment motion is not to make credibility determinations or
24 weigh conflicting evidence with respect to a disputed material fact. *See T.W. Elec. Serv., Inc., v.*
25 *Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

26 B. Summary Judgment Motion

27 Defendant Lujan argues that she is entitled to summary judgment for the following
28 reasons. First, she argues that Plaintiff did not have a property interest in the confiscated

1 contraband. Second, Defendant Lujan argues that if Plaintiff had a property interest in the
2 confiscated contraband, the due process claim fails because the deprivation was authorized.
3 Finally, Defendant Lujan argues that she is entitled to qualified immunity.² Plaintiff argues that he
4 has a property interest in the confiscated items because they were his rightful property, and they
5 have been in his possession since his time at FSP. Dkt. No. 36 at 15–17. He alleges that the only
6 reason the items were confiscated and designated as contraband was because Defendant Lujan
7 realized the value of the items and sought to possess them herself. Dkt. No. 36 at 11–12 and 20.
8 Plaintiff argues that even if the confiscation were authorized and lawful, due process requires that
9 he be allowed to send the items to an individual willing to accept the property. Dkt. No. 36 at 17–
10 20. Finally, Plaintiff argues that Defendant Lujan is not entitled to qualified immunity because a
11 reasonable official

12 would know not to take an inmate’s non-dangerous personal property and then deny the
13 inmate his right to send that property to family and/or friends outside of prison.

14 Dkt. No. 36 at 22.

15 For the reasons set forth below, Court finds that Defendant Lujan is entitled to qualified
16 immunity.

17 **1. Qualified Immunity Standard**

18 Qualified immunity is an entitlement, provided to government officials in the exercise of
19 their duties, not to stand trial or face the other burdens of litigation. *Saucier v. Katz*, 533 U.S. 194,
20 200 (2001), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223, 236 (2009). The
21 doctrine of qualified immunity attempts to balance two important and sometimes competing
22 interests—“the need to hold public officials accountable when they exercise power irresponsibly
23 and the need to shield officials from harassment, distraction, and liability when they perform their
24 duties reasonably.” *Pearson*, 555 U.S. at 231. The doctrine thus intends to take into account the
25 real-world demands on officials in order to allow them to act “swiftly and firmly” in situations

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² Defendant also argues that if the deprivation was unauthorized, the due process claim fails
27 because two meaningful post-deprivation remedies were available to Plaintiff. Dkt. No. 27 at 22–
28 23. The Court declines to address this argument because both parties agree that the deprivation
was authorized by prison regulations, although Plaintiff alleges that the prison regulation was a
pretext for Defendant Lujan’s personal appropriation of the confiscated items.

1 where the rules governing their actions are often “voluminous, ambiguous, and contradictory.”
2 *Mueller v. Auker*, 576 F.3d 979, 993 (9th Cir. 2009). “The purpose of this doctrine is to recognize
3 that holding officials liable for reasonable mistakes might unnecessarily paralyze their ability to
4 make difficult decisions in challenging situations, thus disrupting the effective performance of
5 their public duties.” *Id.*

6 To determine whether a government official is entitled to qualified immunity, the Court
7 must consider (1) whether the official’s conduct violated a constitutional right, and (2) whether
8 that right was clearly established at the time of the incident. *Pearson*, 555 U.S. at 232. Courts are
9 not required to address the two qualified immunity issues in any particular order, and instead may
10 “exercise their sound discretion in deciding which of the two prongs of the qualified immunity
11 analysis should be addressed first in light of the circumstances in the particular case at hand.” *Id.*
12 at 236. With respect to the second prong of the qualified immunity analysis, the Supreme Court
13 has recently held that “[a]n officer cannot be said to have violated a clearly established right unless
14 the right’s contours were sufficiently definite that any reasonable official in his shoes would have
15 understood that he was violating it, meaning that existing precedent . . . placed the statutory or
16 constitutional question beyond debate.” *City and County of San Francisco, Cal. v. Sheehan*, 135
17 S. Ct. 1765, 1774 (2015) (omission in original) (internal quotation marks omitted). This is an
18 “exacting standard” which “gives government officials breathing room to make reasonable but
19 mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate
20 the law.” *Id.* (internal quotation marks omitted). A court determining whether a right was clearly
21 established looks to “Supreme Court and Ninth Circuit law existing at the time of the alleged act.”
22 *Community House, Inc. v. Bieter*, 623 F.3d 945, 967 (9th Cir. 2010) (citing *Osolinski v. Kane*, 92
23 F.3d 934, 936 (9th Cir. 1996)).

24 It is not necessary that a prior decision rule “the very action in question” unlawful for a
25 right to be clearly established. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). However, the
26 Supreme Court has repeatedly cautioned that courts should not define clearly established law at a
27 high level of generality. *See White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam); *see also*
28 *Hamby v. Hammond*, 821 F.3d 1085, 1095 (9th Cir. 2016) (plaintiff need not find case with

1 identical facts, but the further afield existing precedent lies the more likely that official's acts fall
2 within vast zone of conduct that is constitutional).

3 **2. Analysis**

4 The Court finds that Defendant Lujan is entitled to qualified immunity because, making all
5 reasonable inferences in Plaintiff's favor, at the time that Defendant Lujan confiscated Plaintiff's
6 items pursuant to prison regulations, there was no clearly established law that established "beyond
7 debate" that the conduct alleged violated the Constitution.

8 The undisputed facts establish that Defendant Lujan's actions in confiscating the items and
9 declining to allow Plaintiff to mail the items to persons outside the prison were taken in
10 accordance with prison regulations.

11 The pair of Nike shoes and the Invicta watch were confiscated in accordance with prison
12 regulations which require the registration of both the Nike shoes and the Invicta watch, and which
13 designated as contraband items which are not authorized by prison regulations or which are
14 obtained from an unauthorized source. DOM §§ 52051.4, 54030.1, 54030.12.1; 15 Cal. Code.
15 Regs. §§ 3000, 3006, 3191; and Lujan Decl., Ex. B. Neither of the confiscated items was
16 registered. Neither item was listed on Plaintiff's Form 160-H Property Card, Dkt. No. 27-11,
17 which is a requirement for registration, 15 Cal. Code Regs. § 3191 and DOM § 54020.12.1. And
18 Plaintiff has not provided prison officials with receipts for these items that would have allowed
19 prison officials to register them.³ Dkt. No. 36 at 11. Although Plaintiff states that he disputes
20 Defendant's assertion that the confiscated items are unregistered, Dkt. No. 36 at 10, his statement
21 is conclusively contradicted by his Form 160-H Property Card, which does not list either
22 confiscated item. Plaintiff's conclusory and unsupported statement is insufficient to create a
23 material issue of fact as to whether the confiscated items violated prison rules requiring
24 registration. *Fed. Trade Comm'n v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir.
25 1997) ("[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence,

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³ Prison officials have reviewed the receipts for Plaintiff's purchases from third-party vendors,
28 which are kept in his Central File, but there are no receipts for either confiscated item. Lujan
Decl., Ex. H.

1 is insufficient to create a genuine issue of material fact.”) (internal quotation marks and citation
2 omitted).

3 Prison officials’ denial of Plaintiff’s request to send the confiscated items to friends or
4 family outside of prison was also in accordance with prison regulations. Prison regulations require
5 that confiscated items be disposed of by the facility garbage; or removed from the facility grounds
6 by an approved, certified metal vendor; or if state-issued, rerouted to the appropriate departments
7 for disposition and/or repair for reissuing. DOM § 52051.16. While DOM § 52051.16 allows
8 inmates to send home unauthorized items obtained by authorized means, this option is unavailable
9 to Plaintiff with respect to these confiscated items because the confiscated items are unauthorized,
10 in that the shoes have metal eyelets and the watch is greater in value than \$50, and in that neither
11 item was obtained through authorized means.

12 At the time of Defendant Lujan’s actions, it was not clearly established that a prison officer
13 could not seize confiscated items that violated prison regulations. Nor was it clearly established
14 that an inmate had a right to dispose of confiscated items in a manner inconsistent with prison
15 regulations.

16 Plaintiff argues that Defendant Lujan is not entitled to qualified immunity because any
17 reasonable prison official would know not to take an inmate’s non-dangerous personal property
18 and not to deny the inmate his right to send that property to family and/or friends outside of
19 prison. The Court disagrees. First, the uncontested facts establish why the confiscated items (a
20 relatively expensive watch and a pair of shoes with metal eyelets) pose a potential danger in a
21 prison. Further, Plaintiff cites no law or regulation that establishes his right to send these
22 confiscated items to family or friends outside of prison or that establishes his right to possess even
23 purportedly “non-dangerous” personal property that violates prison regulations. Nor is the Court
24 aware of any published Supreme Court or Ninth Circuit law existing in October 2015 that would
25 have put Defendant Lujan on notice that seizing Plaintiff’s property and retaining the property
26 pursuant to prison regulations violated the Constitution. *See Community House, Inc.*, 623 F.3d at
27 967 (looking to Supreme Court and Ninth Circuit law existing at the time of the alleged act to
28 determine whether right was clearly established). Because there was no clearly established right

1 for an inmate to retain property that violated prison regulations, and no clearly established right for
2 an inmate to send outside of the prison property that violated prison regulations, Defendant Lujan
3 is entitled to qualified immunity. *Pearson*, 555 U.S. at 232. In addition, the fact that Defendant
4 Lujan's actions were authorized by prison regulations further weighs in favor of finding qualified
5 immunity. *See Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994) ("Courts have . . .
6 . held that the existence of a statute or ordinance authorizing particular conduct is a factor which
7 militates in favor of the conclusion that a reasonable official would find that conduct
8 constitutional.").

9 Accordingly, the Court finds that Defendant Lujan is entitled to qualified immunity on
10 Plaintiff's due process claim. *See Brown v. Oregon Dep't of Corr.*, 751 F.3d 983, 990 (9th Cir.
11 2014) (defendants are not liable for violation of right that was not clearly established at time
12 violation occurred). The Court GRANTS summary judgment in favor of Defendant Lujan.

13 CONCLUSION

14 For the foregoing reasons, the Court GRANTS Defendant's motion for summary
15 judgment. The Clerk shall terminate Dkt. No. 27, enter judgment in favor of Defendant Lujan,
16 and close this case.

17 **IT IS SO ORDERED.**

18 Dated: March 27, 2018

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21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge
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